IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5278 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHAN SIDI KHARVA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 5278 of 2001

MS BANNA DATTA for MR AR SHAIKH for Petitioner

MR SS PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/11/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 11-5-2001 passed by the District Magistrate, Junagadh, and he has been declared

as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard Ms.Banna Datta for Mr.A.R.Shaikh, learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, three offences have been registered against the detenu and the offence which has been taken into consideration is of 19-2-2001 and the order of detention has been passed on 11-5-2001 and hence, there is a delay in passing the order of detention. She has submitted that statements of four independent witneses have been recorded out of which, statements of witnesses Nos.1 and 2 were recorded on 24-3-2001 by the Police Sub-Inspector, Crime Branch, Junagadh and same has been verified by the Dy.S.P. on 29-3-2001. It is further submitted that statements of witnesses Nos.3 and 4 have been again verified by the detaining authority on 9-5-2001 and he has not verified the statement of other two witnesses Nos.1 and 2. In this connection, she has drawn my attention towards the case of Shankar Vishnubhai Sindhi Vs. Commissioenr of Police, Baroda City, Baroda, 2000(1) G.L.H. 443 more particularly para 9 which runs as under:

> "In our opinin, in the instant case, since the third statement was not verified, the subjective satisfaction was vitiated and the order deserves to be quashed and set aside."

It is further submitted that no affidavit has been filed by the State authority stating the reasons for not verifying the statement of other two witnesses and also for delay in passing the order of detention. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the

> authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no affidavit has been filed either by the detaining authority or by the State authority explaining the reasons for not verifying the statements of two witnesses and also for delay caused in passing the order of detention, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 11-5-2001 passed against the detenu is hereby quashed and set aside. The detenu-Kishan Sidi Kharva is set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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